



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ERIC JOHNSON, ATTORNEY, LARGE AND MID-SIZE
BUSINESS
CC:LM:RFP:STP

FROM: Joseph W. Clark, Chief, Branch 3
(Collection, Bankruptcy and Summonses)
CC:PA:CBS:Br3

SUBJECT: Summoning Access to a Taxpayer's Website

This Chief Counsel Advice responds to your January 8, 2002, Field Service Advice request regarding an examination team that wants to access the restricted portions of a taxpayer's Internet website. We believe that a summons—and not entering into contract and waiver negotiations—is the appropriate vehicle to obtain access to the restricted information. This document is not to be relied upon or otherwise cited as precedent.

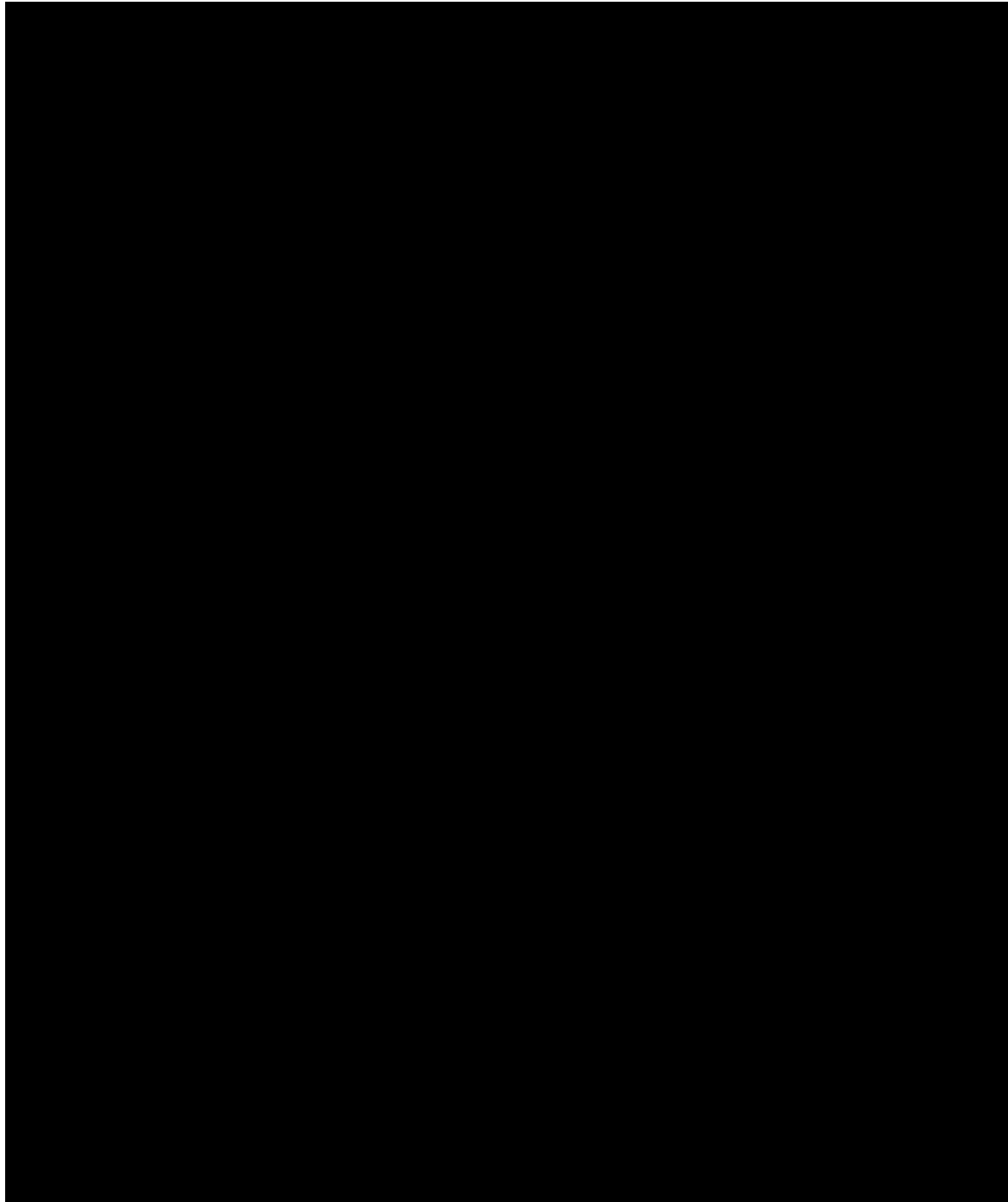
DISCUSSION:

A summoned taxpayer may be required "to produce such books, papers, records, or other data ... as may be relevant or material" to the Service's inquiry. I.R.C. § 7602(a)(2). I.R.C. § 7602 endows the Service with expansive information-gathering authority to encourage effective tax investigations. See United States v. Arthur Young & Co., 465 U.S. 805, 813-15 (1984). Although there are no reported cases specifically holding that access to a website may be summoned, there is a strong argument that a taxpayer's website constitutes "records, or other data" within the meaning of I.R.C. § 7602(a)(2). See United States v. Davey, 543 F.2d 996 (2d Cir. 1976) (summons of computer tapes comprising part of a corporate taxpayer's record keeping system enforced); see also United States v. Norwest Corp., 116 F.3d 1227 (8th Cir. 1997) (summons of tax preparation software enforced).

Under Powell v. United States, 379 U.S. 48, 57-58 (1964), a summons will be judicially enforced if the Government makes a showing that (1) the summons is issued for a proper purpose, (2) that the information sought may be

relevant to that purpose, (3) that the information sought is not already within the Commissioner's possession, and (4) that the administrative steps required by the Internal Revenue Code have been followed. A summons in the instant case must be narrowly tailored to meet these requirements.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:





Please call (202) 622-3630 if you have any questions.

cc: Associate Area Counsel, Large and Mid-Size Business
Associate Chief Counsel (Procedure and Administration)
Assistant Chief Counsel (Collection, Bankruptcy and Summonses)